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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,411	02/10/2004	Holger Jessen	10191/3443	2383
26646	7590	05/03/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			HOANG, JOHNNY H	
			ART UNIT	PAPER NUMBER
			3747	
DATE MAILED: 05/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/776,411	JESSEN, HOLGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Johnny H. Hoang	3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 February 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,7 and 9-12 is/are rejected.
- 7) Claim(s) 2-6 and 8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>02/10/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 7, 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Birk et al (US 6,785,600 B2).

Regarding claim 1, the reference of Birk et al discloses the method for operating an internal combustion engine including the following subject matters: a method for operating an internal combustion engine in which an air-fuel ratio in a combustion chamber is a function of at least one of (a) operating conditions and (b) an operating state of the engine (abstract, and col. 2, line 61 through col. 3, line 6), the method comprising:

using a data model, determining a variable expressing a target air-fuel ratio from a target torque and an air mass ascertained with the aid of one of a model and a measured value, and determining a setpoint fuel quantity to be injected into the combustion chamber (col. 1, line 30 through claim 5, line 33); and

using the data model, determining a setpoint air mass to be conducted to the combustion chamber from the target torque and the variable expressing the air-fuel ratio in the combustion chamber (col. 1, line 30 through col. 5, line 33).

Regarding claims 7, 8, and 12, as discussed in claim 1.

Regarding claims 10, and 11, as discussed in claim 1, the reference of Birk et al further discloses an electrical storage medium, e.g., a read only memory or a flash memory, can be used as the control element (col. 3, lines 7-21).

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 10-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically,

Claim 10, line 1, the recitation of "A computer program stored on a storage medium and containing instructions to perform..."; claim 11, line 1, "An electric storage medium for a control device of an internal combustion engine, the medium storing a computer program for performing..."; and claim 12, line 1 "A control/regulating device for an internal combustion engine programmed to perform..." are directed toward subject matter ineligible for patenting. See MPEP 2106 IV B 1(a). On the other hand, a claim to a tangible computer-readable medium encoded with a computer data structure or program is eligible statutory subject matter, i.e. it is one of four categories of enumerated subject matter, because it is a computer element which defines structural and functional interrelationships between the computer program and other components of a computer which permit the computer's functionality to be realized.

***Allowable Subject Matter***

5. Claims 2-6, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny H. Hoang whose telephone number is (571) 272-4843. The examiner can normally be reached on Monday - Thursday (7:00Am-5:30Pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (571) 272-4856.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHH  
April 28, 2005

Johnny H. Hoang  
Examiner  
Art Unit 3747

*Tony M. Argenbright*  
**Tony M. Argenbright**  
Primary Examiner  
Art Unit 3747